

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

UNITED STATES OF AMERICA, ) **Case No. 3:18-cr-00356-S**  
Plaintiff, ) Dallas, Texas  
v. ) October 31, 2018  
THOMAS D. SELGAS (01), ) 9:30 a.m.  
MICHELLE L. SELGAS (02), ) JOINT MOTION TO MODIFY  
JOHN O. GREEN (03), ) CONDITIONS OF RELEASE [#30]  
Defendants. )

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE REBECCA RUTHERFORD,  
UNITED STATES MAGISTRATE JUDGE.

APPEARANCES:

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1           DALLAS, TEXAS - OCTOBER 31, 2018 - 9:38 A.M.

2           THE COURT: Good morning.

3           MR. KEMINS: Good morning, Your Honor.

4           MR. MICKELSEN: Good morning, Your Honor.

5           MR. MINNS: Good morning, Your Honor.

6           THE COURT: Happy Halloween. Please have a seat.

7           A VOICE: We're all dressed as lawyers for Halloween.

8           THE COURT: Yes. Have you already arranged  
9 yourselves with one case at the bench already, it looks like?

10          MR. MINNS: Yes, Your Honor.

11          A VOICE: If you want -- if we're in the wrong order,  
12 we'll get in the back of the room.

13          THE COURT: It's okay. I can easily -- I just do  
14 like this. It won't change the order. So you guys are United  
15 States of America versus Selgas, et al., 3:18-cr-356-S?

16          MR. KEMINS: Correct, Your Honor. Robert Kemins for  
17 the United States, ma'am.

18          THE COURT: Thank you.

19          MR. MINNS: Michael Minns for John Green, Your Honor.

20          MR. MICKELSEN: And Mick Mickelsen for Mr. Selgas.

21          THE COURT: Good morning.

22          MR. MICKELSEN: Good morning.

23          THE COURT: All right. The last -- I checked the  
24 docket and I did not see a -- was there a -- I see the joint  
25 motion and I just wanted to make sure that -- I wanted to know

1 the Government's response.

2 MR. KEMINS: Your Honor, we, as I told Mr. Minns'  
3 office, we don't object to them meeting with their counsel --

4 THE COURT: Uh-huh.

5 MR. KEMINS: -- as long as the counsel is there in  
6 some version. We're not going to demand that they all be in  
7 the same -- sitting in the same room, but if they could do it  
8 by conference call or videoconference. We just don't -- are  
9 not comfortable within a conspiracy case the three defendants  
10 meeting together unsupervised without their lawyers. So we  
11 don't object to them, you know, if the lawyers see fit to help  
12 with the defense or anything, we certainly don't want to  
13 deprive them of a strategy.

14 I think the other main issue in the motion that was filed  
15 was a -- Mr. Green was still holding some funds that belonged  
16 to the Selgases in his IOLTA account. And we told Mr. Minns'  
17 office we would not object to a one-time transfer of funds  
18 from Mr. Green's IOLTA account back to the Selgases, because  
19 it was intimated that that was impacting on the Selgases'  
20 ability to pay for their defense.

21 Certainly, our argument -- I know there are some  
22 differences as to what it all actually means -- but the  
23 continuing, the ongoing payment of the Selgases' bills from  
24 Mr. Green's IOLTA account would be violations of the  
25 conditions of release and in fact may be more overt acts in a

1 continuing conspiracy. But we would not object to a one-time  
2 bulk transfer of the money back from Mr. Green to the  
3 Selgases.

4 THE COURT: Okay. So the footnote on the certificate  
5 of conference says -- and it's okay to proceed informally. I  
6 appreciate the courtesy of standing, but I think, as we sort  
7 of have a little give-and-take, it's perfectly all right with  
8 me if you just speak from the table. As long as your voice is  
9 picked up by the microphone, --

10 MR. KEMINS: Yes, ma'am.

11 THE COURT: -- it'll be on the record and that'll be  
12 just fine.

13 So the footnote to the certificate of conference says the  
14 Government does not oppose the Defendants meeting together in  
15 the presence of counsel.

16 MR. KEMINS: In the presence of counsel. That's  
17 correct.

18 THE COURT: The Government does oppose Defendants  
19 meeting without counsel?

20 MR. KEMINS: That is correct.

21 THE COURT: And then the Government is not opposed to  
22 tendering the entire amount of the IOLTA account to the  
23 Defendants in a one-time transfer?

24 MR. KEMINS: Correct, Your Honor.

25 THE COURT: Okay. Is that the Defendants'

1 understanding as well?

2 MR. MINNS: Your Honor, yes, Your Honor, it's -- but  
3 I think we have some significant disputes. The Government has  
4 been very easy to negotiate what we agree on and what we  
5 disagree on, and I think we have a collegial relationship on  
6 it, but the disagreements are substantial, and that's -- and I  
7 -- when the Court is ready, I'd like to address those  
8 disagreements.

9 THE COURT: Do you believe that there is a greater  
10 area of disagreement other than the Government's objection to  
11 the Defendants meeting without counsel, or are we limited to  
12 that --

13 MR. MINNS: No, we also need -- we also want the  
14 ability -- well, let me give you an example. My client is  
15 best friends with a church member. We don't know if he's a  
16 witness or not. We think he should be a witness and he should  
17 be given immunity. He's awkward talking to him at church. He  
18 feels like he can't without possibly broaching the order. So  
19 he comes up to him and he walks away with no explanation  
20 whatsoever, which also creates some sort of mystery and  
21 problem.

22 So, my client is a practicing attorney. This is an  
23 extraordinarily substantial and interesting case with  
24 interesting idiosyncrasies in it, and I believe -- and I'll be  
25 corrected if I'm wrong; I haven't gone through the paperwork

1 -- there's over 40,000 pages of papers. So my client lives in  
2 Idaho. Some of the witnesses are in Idaho. Some of the  
3 witnesses are in Texas. We haven't exchanged witness lists.  
4 We've -- both sides agreed to a continuance because of the  
5 complexity of the case. But he's restricted, really, from  
6 assisting on his own case. If he was pro se, he wouldn't be.  
7 So he's being punished, really, for hiring me. If he was pro  
8 se, he would be allowed to talk to witnesses and prepare.

9 And there are very good reasons why -- I mean, there's  
10 people that are dangerous. You know, they have to be  
11 restricted. There's people that are doing other things that  
12 have to be restricted. We don't agree that there's an illegal  
13 conspiracy, but if the Government is correct and -- then we're  
14 not doing any of the things they accused us of doing anyway.  
15 And I can't see what -- it will make the financing of this  
16 case insane. We have a client -- the other defendant was  
17 working with the client. They're partners in a business,  
18 which can't be -- my client can't participate in that  
19 business.

20 It has nothing to do with taxes. They do patent research,  
21 and his partner owns 99 percent, my client owns 1 percent, but  
22 these patents have been worth millions and millions of  
23 dollars. So they can't coordinate, they can't work their  
24 business. One's in Texas, one's in Idaho. All the lawyers  
25 are in Texas. There are no direct flights directly to where

1 my client lives in Idaho. If they can't do anything -- his  
2 client also has my client's legal files, and he has not gotten  
3 them. And we need to work something out so that they can  
4 trade them.

5 And I don't think either of the law offices, for what the  
6 clients are going to be able to pay out of their pocket, can  
7 afford the two law offices to do all of the research through  
8 40,000 pages of paper looking for stuff that might be  
9 relevant. And if the two of them who worked on these papers  
10 can't be in the same room without the lawyers, then they have  
11 to pay three lawyers. I mean, Mrs. Selgas has a lawyer, which  
12 she should have her own lawyer because there is a legal  
13 conflict, although they're happily married for about as many  
14 years as I've been alive, I think, and there's not going to be  
15 a problem with them in community. The Court wisely said  
16 they're husband and wife, they can talk to each other. So  
17 there's three people accused of this situation and two of them  
18 can talk to each other and they can't talk to the third.

19 If there's a reason, I understand that, but we need to be  
20 able to address the specific reason. We have a Sixth  
21 Amendment right to interview witnesses. We have a Sixth  
22 Amendment right to prepare for our trial, for cross-  
23 examination. The witnesses don't have to talk to us, but we  
24 have the right to knock on the door and ask them if they will.  
25 We don't even know all the -- we don't even know all



1 witnesses.

2       So if our client has talked to some of them in church  
3 prohibitively, he's guessing who the witnesses will be,  
4 because there's a CPA who worked on some of the paperwork. So  
5 we're making an intelligent guess that he's likely to be a  
6 witness. He's a witness we would like to call. We are, when  
7 the time comes for pretrial motions, going to ask to see if he  
8 can be granted immunity so that we can get him to testify.  
9 But it creates, I think, an unconstitutional burden in trial  
10 preparation.

11       And I understand there's offsets. Neither one of these  
12 have any -- people have any criminal record. Neither one of  
13 them has ever been accused of any violence. Neither one is  
14 even suspected of trying to coerce a witness in any way. If  
15 that were to happen -- and it will not, there is no  
16 possibility of that -- then we would agree to restrictions  
17 without argument.

18       So there's no rational reason for this form. And as I  
19 said in our motion, the form actually, when you view it to its  
20 full -- I apologize. I used to teach English. When you view  
21 it literally, the agents can't talk to these witnesses. So  
22 when you view it literally, Mr. Mickelson and I wouldn't be  
23 allowed to talk to the witnesses, either. We are agents of  
24 the clients, so we wouldn't be allowed to talk to them.

25       And there's one other issue that I -- I didn't -- I found

1 a case on it today. My client -- this is important to my  
2 client. I did not file it previously because I didn't see any  
3 law on it. He showed me some law this morning, 30 minutes  
4 ago, and I handwrote a motion, which I would like to speak on  
5 in a minute. I've served it on the Government. They're not  
6 prepared to respond, and I'm not asking the Court to rule  
7 today, but I would like to speak on it, because it is an  
8 important issue regarding the Second Amendment. And I  
9 apologize for my bad handwriting. I haven't filed a  
10 handwritten motion --

11 THE COURT: Okay. Well, let me stop you right there.

12 MR. MINNS: Yes, ma'am.

13 THE COURT: This motion goes to the conditions of  
14 release?

15 MR. MINNS: Yes.

16 THE COURT: Okay.

17 MR. MINNS: Yes. Only -- I think that -- unless -- I  
18 believe -- I'm not prepared to talk about anything except the  
19 conditions of release today. I apologize if there's --

20 THE COURT: I am not, either.

21 MR. MINNS: Okay. Thank you, Your Honor.

22 THE COURT: So, and I think the previous order you  
23 filed that was referred to me, if it's related to conditions  
24 of release, I can probably hear you on it. But if it's  
25 something else, --

1 MR. MINNS: No, it's not.

2 THE COURT: -- you said the Second Amendment, so I  
3 wasn't sure.

4 MR. MINNS: It's -- I'd be happy to explain.

5 THE COURT: Let's do one thing at a time.

6 MR. MINNS: Yes, ma'am.

7 THE COURT: Okay.

8 MR. MINNS: Certainly.

9 THE COURT: The first thing I want to talk to, go  
10 back to, is the -- Mr. Green visiting with the Selgases  
11 without their counsel being present.

12 MR. MINNS: Could I add one thing that's very  
13 important?

14 THE COURT: Yes.

15 MR. MINNS: My client is staying in a hotel tonight.  
16 He's using those funds that could be used for his family and  
17 his wife. And if we have a trial, he's going to be staying in  
18 a hotel under this existing order. Otherwise, he would stay  
19 with the Selgases. So this is another expense that he has to  
20 incur that doesn't help the Government prosecute their case at  
21 all and it doesn't cause any harm.

22 But they're -- and neither me or Mr. Mickelsen have been  
23 offered the opportunity to stay in the Selgases' home for the  
24 next few days. And we would have to decline -- I would, and  
25 I'm assuming Mr. Mickelsen would, too -- if it were extended.

1 We can't -- it's so unworkable. I mean, they're deprived of  
2 -- my client is from Idaho. He has to pay to fly up here. He  
3 has to pay for lodging. If this trial lasts two or three  
4 weeks, it's going to be a very substantial expense, in  
5 addition to all the other expenses. Sometimes that happens.  
6 But there's no reason for it because he can stay with the  
7 Selgases. If the order is changed. Under the existing order,  
8 he can't.

9 THE COURT: Right. Right. So, I just want to  
10 address that question and if this is really the least  
11 restrictive condition of release that will assure the safety  
12 of the community and the Defendants' appearance. And  
13 obviously, there are sort of generally questions about  
14 obstruction of justice, but can you specifically address the  
15 Defendants speaking to each other without counsel present?

16 MR. KEMINS: Well, I suppose my only observation to  
17 that, and I realize that they haven't been found guilty yet,  
18 but -- I don't mean to sound like a smarty pants -- but maybe  
19 that's one of the downsides of being -- participating in a  
20 conspiracy, or at least the Government's contention of a  
21 conspiracy, that you, during the pendency of the pretrial  
22 hearings, you can't talk your co-conspirators without your  
23 lawyers present.

24 And, I mean, in terms of the paperwork, we gave all three  
25 counsel identical discovery. So it's not like it's residing

1 in one place that, you know, all these 40,000 pages were  
2 turned over to each counsel. So, you know, despite the fact  
3 that the Selgases are here in Texas and Mr. Green is in Idaho,  
4 you know, they can work with their counsel on that. Their  
5 counsel can go through that.

6 I suppose, if they're finding that this is becoming a  
7 financial hardship, they could come back to the Court and say,  
8 we can't afford this anymore, file the proper financial forms,  
9 and see if they qualify for appointed counsel. But our view  
10 is that for the three of them to be able to get in -- just be  
11 in the same room unsupervised, we're just not in favor of  
12 that.

13 So, again, we're trying to be as reasonable as possible.  
14 We think we are, in terms of different methods that people  
15 meet these days without being in the same room. We wouldn't  
16 oppose any of those.

17 THE COURT: Such as--?

18 MR. KEMINS: Conference calls, teleconferences,  
19 Skype. You know, whatever. Some sort of group meeting app or  
20 something like that. You know.

21 THE COURT: Would the Government require each of  
22 their attorneys to be present, or could --

23 MR. KEMINS: One could be there.

24 THE COURT: -- one just supervise the --

25 MR. KEMINS: One. One could do it. Yeah. All three

1 would not have to be there at the same time. Obvi... I'm  
2 sorry.

3 MR. MICKELSEN: That's fine. Could I be heard, just  
4 briefly?

5 THE COURT: Yes. Yes.

6 MR. MICKELSEN: So I'll just try to be more focused.  
7 The practical concern -- I appreciate the Government agreeing  
8 that we should be able to meet basically for joint defense  
9 purposes. But the practical concern is Mr. Green is a  
10 practicing lawyer. He's not precluded from practicing law  
11 right now. His office is on Mr. Selgas' property currently,  
12 like most of his files. What he would do is he, from what I  
13 understand, --

14 THE COURT: Here in --

15 MR. MICKELSEN: In Texas.

16 THE COURT: In Texas?

17 MR. MICKELSEN: Yes. Yes, he'd work -- he'd fly --  
18 prior to the indictment, he was coming down about every few  
19 weeks, would stay with the Selgases. Mr. Selgas basically  
20 worked as a legal assistant. And so they're -- right now, his  
21 files and his -- and those things are at Mr. Selgas' house. I  
22 don't think the Government has any evidence or any reason to  
23 believe there's anything nefarious about the legal practice or  
24 that relationship.

25 In addition, they are both partners in a business called

1 MyMail, which basically deals with patents and intellectual  
2 property. And so there's business that they undertake  
3 together that I don't think has anything to do with the tax  
4 issues and the issues involved in the indictment.

5 So I think those are the most practical concerns. I don't  
6 think -- I clearly understand the order to mean that we can  
7 speak to witnesses. Maybe clarifying language saying don't  
8 speak about the case to potential witnesses. I think that  
9 would be a reasonable, you know, modification to that  
10 condition of release.

11 But I just wanted to bring the Court's attention to what I  
12 think the practical thing is, is I think there's a legitimate  
13 law practice that Mr. Selgas has been assisting Mr. Green at  
14 for years. Many of those files and things are on Mr. Green's  
15 -- on Mr. Selgas' property.

16 THE COURT: Can you describe this property to me?  
17 Are we talking about like a garage apartment behind a house?  
18 I don't have a --

19 MR. MICKELSEN: It's in a renovated barn that they've  
20 made into like an office. It's a -- actually, a barn  
21 building, but there's an office out there with files and  
22 computers.

23 THE COURT: And have you visited the property since  
24 -- I mean, has Mr. Green been able to -- I don't mean to  
25 engage you directly, but has he visited the property and his

1 office since the indictment?

2 MR. MINNS: Not since the release order because it  
3 precludes him from meeting without all of the attorneys. And  
4 my office is in Houston. It precludes him from meeting with  
5 the Selgases. So he can't go onto their property without the  
6 possibility of violating the order.

7 So he is restricted right now from going into -- he works  
8 some in Idaho, where he lives with his wife and family, and he  
9 works some in -- out of Mr. Selgas' home, which is where all  
10 of his files are. And he has not been to that home since the  
11 bond restriction.

12 THE COURT: Did you know this reason?

13 MR. KEMINS: I just found this out this morning, Your  
14 Honor.

15 In terms of the MyMail, the only thing I'll say about  
16 MyMail is that activities at MyMail are mentioned in the  
17 indictment because some of the money that the Government  
18 alleges the taxes were evaded on by the Selgases were derived  
19 from the operations of MyMail.

20 Now, I know both Mr. Selgas and Mr. Green, from what I  
21 remember, are fairly minority partners in MyMail. There is  
22 one man named Richard Derby who owns all of it. I don't know  
23 what Mr. Derby's position is. I know he's fond of both Mr.  
24 Selgas and Mr. Green in terms of can I run -- he could --  
25 MyMail is somewhere further out in Texas. And so I don't know



1 what regularity they are both out at MyMail, if they  
2 teleconference with Mr. -- you know, we don't know that. So I  
3 haven't heard anything about the MyMail operations being  
4 severely damaged, but this morning is the first I've heard  
5 that Mr. Green had files out at Mr. Selgas' property and that  
6 he actually worked out at Mr. Selgas' property and that  
7 somehow there was an issue with MyMail. I mean, you know, I  
8 would think that with MyMail they could both do their work  
9 separately for it and -- I don't know. I just don't know  
10 enough about it because I didn't learn about it until a half  
11 hour ago, if that long.

12 THE COURT: Well, it is news to me as well, this  
13 piece about the office being on the Selgases' property. Does  
14 he rent the space from the Selgases for the office?

15 MR. MICKELSEN: I don't think he pays any rent for  
16 the space.

17 THE COURT: Okay. It's just made available for  
18 issues?

19 MR. MICKELSEN: It's just made available. You know,  
20 now, in total candor, so that -- so -- they had this -- this  
21 part is part of the indictment, is Mr. Selgas was -- expenses  
22 were paid through Mr. Green's IOLTA account, and so this all  
23 served as -- that's a part -- I mean, they're longtime  
24 friends. They have this longtime relationship. So all of  
25 that, that was part of the relationship.

1 In other words, you can use my barn, you can keep files  
2 out here, I'll do legal work for you. And he was -- and Mr.  
3 Green was using his IOLTA account and paying Mr. Selgas'  
4 expenses. And that's part of the indictment. But that's  
5 done. That's stopped. There will be no more of that. Now  
6 there's just a legitimate law practice and this relationship  
7 that the two have.

8 So, and you know, I asked the prosecution if they had any  
9 reason to believe that the law practice was engaged in any  
10 criminal conduct, or MyMail, and the Government said no. And  
11 so, given that there's -- the nature of the allegation, it's a  
12 tax case, and the fact that these men have a longstanding  
13 business relationship, it just, to me, it seems reasonable to  
14 permit them to continue to meet and work together.

15 The tax issue is -- everything related to the tax is  
16 stopped. In other words, Mr. Green is shutting down his IOLTA  
17 account. He wants to return the funds that he -- that belong  
18 to Mr. Selgas back to Mr. Selgas. They want to wind up their  
19 law business, and they want to be able to communicate in  
20 relation to MyMail.

21 THE COURT: Well, I know, and I think they would be  
22 able to wind up their relationship if they're not allowed to  
23 talk to each other. It does seem onerous to require the  
24 attorneys to supervise that.

25 MR. KEMINS: You know, again, at this point, you

1 know, in terms of their relationship, we knew what our  
2 investigation revealed, which had to do with Mr. Green paying  
3 their bills and things like that. We didn't know until this  
4 morning, as I told the Court, about what was going out where  
5 they lived in I think it's Palestine, Texas, or whatever. And  
6 in terms of MyMail, --

7 THE COURT: Sure.

8 MR. KEMINS: -- you know, we hadn't had anybody from  
9 MyMail come to us and say, jeez, guys, we're really hurting  
10 with these things. So, --

11 THE COURT: Now that this additional information has  
12 come up, do you think we could craft by agreement some  
13 modification to the conditions of release?

14 MR. KEMINS: Sure. Yeah. I don't see why we can't  
15 come to some agreement on that, that, you know, obviously, Mr.  
16 Mickelsen and Mr. Minns know and they can instruct their  
17 clients, and I'm sure the Court will, that trying to get smart  
18 and do some sort of end run will just get them in more  
19 trouble. So, --

20 THE COURT: Absolutely.

21 MR. KEMINS: -- you know, I -- again, I don't want to  
22 deprive them of their ability to defend themselves, either in  
23 meeting with their counsel or in paying their counsel. So if  
24 we can craft something along those lines, we're good with it.

25 THE COURT: Right. I certainly don't want the

1 conditions of release to have these unintended consequences  
2 that hamper the prosecution, the defense, or anything with  
3 respect to these parties' other aspects that is not really  
4 related to showing up and keeping the community safe.

5 MR. KEMINS: Yeah. And in light of one other thing  
6 that Mr. Minns said, obviously, we're not Probation, but if  
7 Mr. Green or the Selgases meet with someone who turns out to  
8 be a witness but they honestly don't know they're a witness  
9 because nobody has published any witness lists yet, we're not  
10 going to be banging on your door saying violate them, so --

11 MR. MINNS: If I could respond to that. Because Mr.  
12 Kemins is an honorable man. I don't have any doubt in my mind  
13 that he wouldn't try to take unjust advantage of this. It's  
14 just that I think one of the reasons he trusts me on that,  
15 we've been opposite each other and we've both always told each  
16 other the truth back and forth. So I'm ultra-cautious about  
17 that. I don't want to --

18 THE COURT: Which is legitimate and I appreciate  
19 everyone's concern for making sure that they stay within the  
20 strictures of the conditions. But I don't think it is  
21 intended at all to prevent the Defendants from having a casual  
22 conversation with their friends at church. We could, I think,  
23 craft a modification that will prohibit them from discussing  
24 the case with other people who might be potential witnesses.  
25 But otherwise, they should be able to have normal interactions

1 in their community.

2 MR. MINNS: Well, it goes further than that, though,  
3 Your Honor. There's a CPA that we want to interview in Idaho.  
4 I --

5 THE COURT: They want Mr. Green to do that?

6 MR. MINNS: I would like him to be able to when we  
7 start learning and I start -- I'm not -- I don't know this  
8 case well enough to -- I've had to confer with my client on  
9 several of the Court's questions. So I don't yet know this  
10 case well enough to answer all of these questions. It's a new  
11 case. And basically, both law offices had other trials they  
12 had to attend to, and since we couldn't really start working  
13 together until we had this hearing, I'm not super-familiar  
14 with it. But I'm -- I know there's a CPA in Dakota. In Iowa,  
15 excuse me. Who, I was in Iowa.

16 A VOICE: Idaho.

17 MR. MINNS: Idaho. Excuse me.

18 THE COURT: It's okay. I've got the map of the  
19 United States in my head and we're kind of moving all around.

20 MR. MINNS: I know. I apologize.

21 THE COURT: I was in Idaho and then all of a sudden  
22 we took this sort of turn to Iowa. I was like, wait a minute.

23 MR. MINNS: Never follow me for directions, Your  
24 Honor. I have a very bad sense of directions, and I'm going  
25 to Houston and Bay City, Michigan for hearings right after

1 this. I apologize. And I even do that in trial.

2 THE COURT: So, would you be available to, like if  
3 there was a -- I think sort of the Defendant unsupervised with  
4 a potential witness is a concern that I can understand. But  
5 if we were able to use technology to allow you to Skype into  
6 that or to do it remotely so that it wasn't just the Defendant  
7 with a potential witness, is that something that the  
8 Government -- we think we could craft?

9 MR. MINNS: I mean, --

10 MR. KEMINS: Yeah, that'd be fine, too. Even a  
11 conference call.

12 MR. MINNS: Can a --

13 MR. KEMINS: Even a speakerphone.

14 MR. MINNS: Can a paralegal be on it, so we don't  
15 have to have an attorney from either one of the offices --

16 THE COURT: On these --

17 MR. MINNS: -- on the phone call?

18 MR. KEMINS: That's fine. We would not object to  
19 that.

20 THE COURT: Okay.

21 MR. KEMINS: Just someone from the lawyers. Just  
22 whoever the lawyer sees fit to put on.

23 MR. MINNS: And is the Court then saying that these  
24 -- these two gentlemen have prepared cases which went in front  
25 of courts and tried them. Are they going to be prohibited

1 from interviewing witnesses unless there's an attorney in the  
2 room with them?

3 THE COURT: No. No, not an attorney in the room with  
4 them, but I think we have to have a legal -- someone from the  
5 law firm at least on the phone, if it's, say, a conference  
6 call.

7 MR. MINNS: And it can be a paralegal?

8 THE COURT: Can be a paralegal. Just so that there's  
9 a --

10 MR. MINNS: A third party?

11 THE COURT: A third party. It's not really a third  
12 party because they're --

13 MR. MINNS: Yeah.

14 THE COURT: Would be working for one of the  
15 attorneys. But at least a third person with an obligation to  
16 the Court.

17 MR. MICKELSEN: I would just state for the record,  
18 because I want a witness to any conversations like that where  
19 my client is talking to any potential witnesses, okay, so I  
20 don't want a witness getting on the stand saying, well, Mr.  
21 Selgas said this and Mr. Selgas said that but I didn't have a  
22 witness there. So I'm fine with that.

23 MR. MINNS: And on the issue, the -- there's a --  
24 it's a very complex case, but the issue relating to my client  
25 is rather simple. The Government is saying he used his IOLTA

1 account improperly. And so we want permission of the Court,  
2 because he's accused that he shouldn't write checks out to who  
3 he wrote checks out to, we very much disagree, but we don't  
4 want to get charged with something while this case is going  
5 on, so we want the Court's permission, and the Government has  
6 agreed to this, to --

7 THE COURT: Yes.

8 MR. MINNS: -- close -- and not the IOLTA account. I  
9 don't want to put my client out of business. So he doesn't  
10 want to close his IOLTA account. He just wants to close the  
11 Selgases' portion of his IOLTA account and send them a check  
12 closing that out.

13 THE COURT: Yes. So the Court is going to grant the  
14 motion. The Defendants will be able to meet together in the  
15 presence of counsel. That can be accommodated with the use of  
16 technology so that there's some sort of distance.

17 With respect to the IOLTA account, that one-time transfer,  
18 that will be approved.

19 With respect to witnesses or other third parties, the  
20 Defendants are only prohibited from talking about the case.  
21 And then if they meet together or if they interview potential  
22 witnesses, that can be accomplished remotely and there will be  
23 a representative of the law firm representing the Defendant  
24 present on that.

25 So what I'd like to do, and I'm seeing agreement with that



1 ruling, and so what I would like to do is have the parties  
2 reduce this to writing in terms that they think are clear that  
3 the Defendants can understand and submit that to me for a  
4 signature. Is that agreeable?

5 MR. MINNS: The only clarification, Your Honor, --

6 THE COURT: Yes.

7 MR. MINNS: -- is what about the issue with the  
8 ongoing business in relation to MyMail and the law firm?

9 THE COURT: So, I think he should be able to go onto  
10 the property to access the records with -- if they're -- I  
11 don't really have my head around this MyMail business  
12 situation and what it is that -- I certainly don't intend to  
13 prohibit them from carrying on legitimate business. But I  
14 don't understand -- I don't have an understanding for how many  
15 people are involved or what their -- what it is. So, --

16 MR. MICKELSEN: Well, could I suggest perhaps --

17 THE COURT: Yes.

18 MR. MICKELSEN: -- the order just say that they --  
19 the Defendants may meet in relation to necessary business  
20 activities pertaining to MyMail and the law practice?

21 THE COURT: That doesn't touch on the case or any of  
22 the allegations in the indictment. I --

23 MR. MICKELSEN: I mean, yeah, just that they may meet  
24 and -- necessary and engage in that business, in the business.  
25 Yes. That it has nothing to do with the activities in the

1 indictment.

2 THE COURT: And I --

3 MR. MICKELSEN: Just to engage in the law practice  
4 and --

5 THE COURT: I think I heard the Government say  
6 there's not really an objection but also that this piece with  
7 the MyMail was new. And so I would like just for everyone to  
8 have a slightly better understanding. But I think, with a  
9 little bit of discussion between the attorneys, that that may  
10 be able to be hammered out and we can have a modification that  
11 --

12 MR. MICKELSON: Okay.

13 THE COURT: -- everyone is comfortable with.

14 But at this point, especially since I don't feel like the  
15 Government has been completely informed as to what the -- all  
16 the nuances of the situation, and I'm not completely clear on  
17 it, that I would like you guys to see if, with a little  
18 discussion, you can't agree to something that is workable for  
19 the parties.

20 Because, as a concept, I'm not, but I feel like there's --  
21 this is new. The MyMail thing is a new piece to me. I don't  
22 understand it completely. And I want to make sure the  
23 Government understands it completely, because I think there  
24 may actually be agreement with just a little bit more  
25 information shared --

1 MR. MINNS: The -- the --

2 THE COURT: -- about what the Defendants want.

3 MR. MINNS: Yeah. They've worked together in my  
4 client's law practice for ten years. It's -- Mr. Selgas is  
5 kind of like his right hand. He doesn't know where to find  
6 the files. The -- there's -- I mean, he -- he doesn't -- I  
7 mean, he asked to address the Court and I decided not -- to  
8 ask him not to, because I -- but I want to make sure the issue  
9 is -- is -- because he can't conceive of even handling his --  
10 first of all, being indicted has crushed a great deal of his  
11 practice anyway. And he gives full disclosure to anybody that  
12 wants to call him or talk to him, which is a good and  
13 honorable thing to do but it further crushes the practice.

14 He thinks he would have trouble practicing without the  
15 assistance of Mr. Selgas anyway. I can see a situation where  
16 these two long-term friends accidentally talk about something,  
17 and they would be instructed to immediately get a paralegal or  
18 a lawyer or somebody from one of the two firms on the phone or  
19 Skype and stop it immediately, and they'd both be instructed  
20 by counsel, if that happens, you have to stop.

21 But the issue of the IOLTA account is so finite. After  
22 you sign this order, the money will not exist. There's no  
23 possibility that my client will ever write a check from his  
24 IOLTA account on behalf of Mr. Selgas again. Therefore, that  
25 issue is kind of dead. Whether he had the right to or not I

1 guess is subject to, you know, the jury's findings ultimately.  
2 But it won't matter, and he's not -- there's no possibility --  
3 I would withdraw if they -- I can't even imagine resi --  
4 conspiring to --

5 THE COURT: Sure. And I --

6 MR. MINNS: -- nor move money through his IOLTA  
7 account.

8 THE COURT: So I think before the motion was even  
9 presented to the Court, there was a lot of agreement that the  
10 --

11 MR. MINNS: Yes, Your Honor.

12 THE COURT: -- the form was not satisfactory with  
13 respect to the nuances of this situation, and I think counsel  
14 came to a lot of agreement, and the Court will actually grant  
15 to the extent it is agreed.

16 I think today there has been additional agreement as to  
17 how some of these conditions can be modified. And so what I  
18 want to do right now is, with that preliminary ruling in mind,  
19 allow the lawyers to go back and to send me a proposed order  
20 that will allow these modifications.

21 Now, I have not seen your handwritten motion.

22 MR. MINNS: I'm sorry, Your Honor.

23 THE COURT: So it may not be appropriate for me to  
24 consider it now. But you said Second Amendment, so are there  
25 guns in Idaho that someone wants access to? Is that what

1 you're talking about?

2 MR. MINNS: Yes, Your Honor. And in all fairness to  
3 Mr. Kemins, I wrote in the motion that we would not ask for a  
4 ruling today.

5 THE COURT: Okay.

6 MR. MINNS: He has not had time to brief this --

7 THE COURT: Okay.

8 MR. MINNS: -- or respond. And I apologize to Mr.  
9 Kemins and apologize to the Court, my -- not just because my  
10 handwriting is horrible but because I don't like to do it on  
11 the spur the moment, but -- and I'm not a hunter, Judge, so I  
12 don't understand -- and I apologize also to my client in that  
13 regard. Where he lives is in a -- in the winter is a  
14 dangerous place.

15 THE COURT: I'm familiar with the state of Idaho.

16 MR. MINNS: Ah. So, --

17 THE COURT: So are you worried about bears?

18 MR. MINNS: Yes, Your Honor, and other -- well,  
19 you're more -- I'm familiar -- I've been there -- I've spent  
20 one day in the state of Idaho. And it was not in the winter.  
21 So, so he has a large family. They have eliminated all guns  
22 from the household. This is not a case that has anything to  
23 do about violence or guns. And we found a -- I refused to  
24 file a motion until I found a case on point allowing the  
25 weapons, and that's why I apologize to everybody, I felt I

1 committed malpractice not filing it.

2 THE COURT: So, I'm -- what I'm going to let you do  
3 is allow the Government to review it. This also needs to go  
4 to whoever the supervising officer is, because I will want  
5 them to weigh in on this issue as well.

6 MR. MINNS: Of course, Your Honor.

7 THE COURT: Or your Pretrial supervising officer.

8 MR. KEMINS: Again, if like -- I'd briefed it, you  
9 know, if there's a -- there might be a way to reach a  
10 compromise. If we're worried about bears, you know,  
11 certainly, one rifle, one bolt-action -- I hate to --

12 THE COURT: No, no, I --

13 MR. KEMINS: -- try to get into who needs what guns  
14 these days, but --

15 THE COURT: I know where you're -- exactly. Yes.

16 MR. KEMINS: But --

17 THE COURT: If we're talking about something for a  
18 bear. But like I said, I do want the supervising -- the  
19 Pretrial supervising officer to visit with you about that,  
20 because their recommendation will be very important to me.  
21 And they're the ones who are going out to the house visiting.

22 MR. MINNS: My client informs me that he -- and this  
23 will be done for a second time, but he had already visited  
24 with the officer on this issue and the officer told him that  
25 they -- that this is not their objection and they don't have

1 an objection to it. My client was a --

2 THE COURT: Okay.

3 MR. MINNS: Was a police officer for ten years.

4 THE COURT: Well, police officers --

5 MR. MINNS: Yes.

6 THE COURT: -- (overspoken). At this moment in time,  
7 we're talking about protection from bears --

8 MR. MINNS: That's correct, Your Honor.

9 THE COURT: -- as they're working towards their den  
10 and trying to get one more, you know, trash can full of  
11 yumyums before they go and hibernate for the winter.

12 So it's not really ripe for the Court's consideration at  
13 this moment, so I'm going to let it ripen. And like I said, I  
14 want the Government to be able to weigh in. I want the  
15 supervising -- the motion -- if you need to file a supplement  
16 that indicates that you've talked to the Pretrial Services  
17 officer about it and have their recommendation in there as  
18 well, I think this may also be something that can be worked  
19 out.

20 MR. KEMINS: And I guess I don't know what weapons  
21 Mr. Green had in his house, but if he has a preferred bear  
22 protection rifle, maybe they can inform us of that and we  
23 could just make --

24 THE COURT: Perhaps, as long as it's not, you know,  
25 something that would also -- there are --

1 MR. KEMINS: Well, yeah, I don't know if --

2 THE COURT: I don't want to get into that.

3 MR. KEMINS: I don't know if he needs an M16 machine  
4 gun for a bear, but, you know, --

5 THE COURT: I'm sure it would do the trick, but  
6 there's probably something else that would work.

7 MR. KEMINS: I suppose in terms of also MyMail, I  
8 think to give the defense lawyers -- let me ask my agent if --  
9 to give Mr. Derby a call, who I understand still runs the  
10 whole -- it's his show, and talk to him, and then that might  
11 help us work out some compromise. But --

12 THE COURT: I think so.

13 MR. KEMINS: -- if they could let -- one of them  
14 could let Mr. Derby know that the agent may call him and he  
15 doesn't immediately have to call his lawyer.

16 THE COURT: Sure. Do you think we might be able to  
17 have a proposed order by Monday? Do you think that is doable?

18 MR. KEMINS: I --

19 THE COURT: I know you're headed to Michigan.

20 MR. MINNS: Yes, Your Honor.

21 MR. KEMINS: I'm headed to Tennessee, but if Mr. --  
22 if somebody wants to take that -- a shot at drafting it, I'm  
23 not opposed to taking a look at it.

24 MR. MICKELSEN: I'm just not sure I got everything.  
25 You're out of town until Monday?



1           MR. MINNS: I've got two hearings coming up, and one  
2 of them is in Bay City, Michigan and there's no direct  
3 flights.

4           THE COURT: You're more than welcome to sit in the  
5 hallway or even in my reception area for just a little bit to  
6 put some of this together, handwritten on your notepad, and  
7 then maybe it can be memorialized a little bit. Essentially  
8 --

9           MR. MICKELSEN: We'll get it done. I'll get it done.

10          THE COURT: Okay. And I'm just -- I feel like if  
11 there's a deadline out there, there's, you know, a trigger for  
12 me to check up on it and accountability for everyone. I don't  
13 want it to sort of get lost.

14          MR. MINNS: I agree.

15          THE COURT: So if Monday is pinching -- I don't want  
16 it to be a pressure. I was just trying to be helpful.

17          MR. MINNS: No. Usually, we're begging the judge for  
18 exactly the order that you just gave us, and so --

19          THE COURT: I put it on you guys to craft the orders  
20 because that's -- we have a couple different things that are  
21 working and you guys are going to be better able to put it in  
22 terms that are acceptable to the Government and understandable  
23 to the three defendants.

24          MR. MINNS: And he is in town right now, and can he  
25 give up his hotel reservation and stay at the Selgases' house?

1 No? Okay. All right.

2 THE COURT: No. Let's get this all --

3 MR. MINNS: Yes, Your Honor.

4 THE COURT: -- squared away --

5 MR. MINNS: I got it.

6 THE COURT: -- and memorialized.

7 MR. MINNS: I'm just talking.

8 THE COURT: Good try. All right. Then we're  
9 adjourned as to this matter. Thank you.

10 MR. MINNS: Thank you, Your Honor.

11 MR. MICKELSEN: Thank you, Your Honor.

12 MR. KEMINS: Thank you, Your Honor.

13 (Proceedings concluded at 10:18 a.m.)

14 --oOo--

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CERTIFICATE

20

I certify that the foregoing is a correct transcript from  
21 the sound recording of the proceedings in the above-entitled  
matter.

22

**/s/ Kathy Rehling**

**12/08/2018**

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Kathy Rehling, CETD-444  
Certified Electronic Court Transcriber

Date

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35

INDEX

1

2

PROCEEDINGS

3

3

WITNESSES

4

-none-

5

EXHIBITS

6

-none-

7

RULINGS

24

8

END OF PROCEEDINGS

34

9

INDEX

35

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25